

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-7791 of 2016 (O&M)
Date of decision: 05.10.2018

Kiran Bakshi and another

....Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Krishan Singh Dadwal, Advocate
for the petitioners.

Mr. Ashok Muthreja, DAG, Haryana.

Mr. S.S. Rangi, Advocate
for respondent No.2.

RAJ SHEKHAR ATTRI, J.

Through this petition, the petitioners are seeking for the quashing of first information report No.123 dated 17.06.2015, under Sections 420, 406, 120-B of the Indian Penal Code registered at Police Station Mulana, District Ambala and all the subsequent proceedings.

FIR was registered on the statement of complainant/respondent No.2 Tarsem Monga, wherein it has been alleged that petitioner-Kiran Bakshi was the owner of 66 marlas of land, having 66/183th share out of the total holding comprised in Khewat/Khatauni No.13/13, Khasra No.47//17(2-7), 25(6-16). She sold the said land to the complainant vide sale deed No.1405 dated 07.01.2010 registered in the office of Sub Registrar Mullana for a valuable consideration of Rs.10,50,000/-.

After registration of the said sale deed, petitioner No.1-Kiran Bakshi left with no land out of Khasra No.47//17 and 25 and this fact was well within the knowledge of her husband. Even Mutation No.2515 dated 28.01.2015 was sanctioned in the name of the complainant on the basis of the said sale deed No.1405 dated 07.01.2010 but at the time of preparing *jamabandi* for the year 2009-10, inadvertently, the said mutation was not incorporated *qua* Khewat No.13 and thus, petitioner-Kiran Bakshi was wrongly shown as a co-owner with regard to 66 marla of land, which she had already sold to the complainant. But by taking undue advantage of the above-said wrong entries in the revenue record, she further executed the sale deeds to other persons and thus she committed offence of cheating.

I have heard learned counsel for the petitioner and have gone through the record.

Learned counsel for the complainant placed on record a catalogue showing sales made by the petitioners to different persons.

The record reveals that initially, the land measuring 46K-07M was owned jointly by Smt. Kiran Bakshi and Smt. Satya Devi in equal shares. Thus, out of the total land, Kiran Bakshi was owner of 23K-3 ½ M and Satya Devi was also owner of the equal land. Kiran Bakshi had sold land of her share to different persons as per the following details:-

Sr. No.	Sale Deed No. and Date	Area of the land	Name of owner/purchaser
1	916/1 dated 31/12/2002 (Intkal No.1778)	10 marla	Roshal Lal s/o Shri Mansa Ram and Smt Paramjeet Kaur w/o Shri Roshan Lal

Sr. No.	Sale Deed No. and Date	Area of the land	Name of owner/purchaser
2	915/1 dated 31/12/2002 (Intkal No.1780)	10 marla	Smt Satwinder Kaur w/o Shri Baldev Singh
3	920/1 dated 31/12/2002 (Intkal No.1781)	10 marla	Jai Chand Sharma s/o Shri Ganeshi Lal
4	923/1 dated 31/12/2002 (Intkal No.1782)	05 marla	Smt Swaran Kaur w/o Shri Mangal Singh
5	922/1 dated 31/12/2002 (Intkal No.1783)	05 marla	Jaswinder Kaur w/o Ravinder Singh
6	921/1 dated 31/12/2002 (Intkal No.1784)	10 marla	Kulwinder Kaur wife of Sh Balwinder Singh
7	918/1 dated 31/12/2002 (Intkal No.1785)	05 marla	Sunil Kumar s/o Shri Chabil Dass
8	917/1 dated 31/12/2002 (Intkal No.1786)	10 marla	Balwant Ram s/o Chabil Dass
9	919/1 dated 31/12/2002 (Intkal No.1787)	10 marla	Parveen Kumar s/o Sh Jai Kishan and Janak Raj s/o Shri Ram Lal
10	1057/1 dated 25/02/2003 (Intkal No.1978)	10 marla	Ashwani Kumar s/o Shri Mam Chand
11	1180/1 dated 27/03/2003 (Intkal No.2043)	05 marla	Gurbaksh Lal Sudan s/o Sheetal Singh
12	1181/1 dated 27/03/2003 (Intkal No.2044)	30.55 sq yds	Gurbaksh Lal Sudan s/o Sheetal Singh
13	874/1 dated 19/01/2004 (Intkal No.2045)	10 marla	Balwant Rai s/o Shri Chabil Dass
14	96/1 dated 29/4/2004 (Intkal No.2160)	05 marla	Surit Singh s/o Shri Pritam Singh
15	97/1 dated 29/4/2004 (Intkal No.1967)	05 marla	Balbir Singh s/o Shri Wazir Singh
16	98/1 dated 29/4/2004 (Intkal No.2057)	05 marla	Rajinder Pal Arora s/o Shri Charan Dass
17	99/1 dated 29/4/2004 (Intkal No.1986)	01 marla	Rajinder Pal Arora s/o Shri Charan Dass
18	100/1 dated 29/4/2004 (Intkal No.2098)	10 marla	Jagir Singh s/o Shri Mela Singh
19	101/1 dated 29/4/2004 (Intkal No.2073)	10 marla	Sukhdev Singh s/o Shri Fagga Singh

Sr. No.	Sale Deed No. and Date	Area of the land	Name of owner/purchaser
20	102/1 dated 29/4/2004 (Intkal No.1985)	10 marla	Harjit Siungh s/o Sh Gurcharan Singh
21	103/1 dated 29/4/2004 (Intkal No.2101)	10 marla	Smt Surinder Kaur w/o Shri Kanwaljit Singh
22	104/1 dated 29/4/2004 (Intkal No.2100)	10 marla	Smt Balwinder Kaur w/o Shri Swaran Parkash Singh
23	106/1 dated 29/4/2004 (Intkal No.2099)	05 marla	Smt Swaran Kaur w/o Sh Mangal Singh
24	107/1 dated 29/4/2004 (Intkal No.1987)	05 marla	Smt Avinash Kaur w/o Sh Gurbhajan Singh
25	108/1 dated 29/4/2004 (Intkal No.2170)	10 marla	Rahul Chauhan s/o Sh Raj Kumar Chauhan
26	852/1 dated 12/1/2004 (Intkal No.2514)	10 marla	Ved Parkash Bakshi s/o Sh Ram
27	1374/1 dated 04/1/2010 (Intkal No.)	03k-1marla	Smt Asha Monga wife of Tarsem Monga
28	1405/1 dated 07/1/2010 (Intkal No.2515)	10 k-10 marla	Dr. Tarsem Monga

Thus, after executing the sale deed No.1405 dated 07.01.2010 for 10 kanal 10 marlas land, she has further sold by executing following sale deeds:-

Sr. No.	Sale Deed No. and Date	Area of the land	Name of owner/purchaser
28-A	No 947 dated 19/9/2013 (Intakal No 3152)	5 marla	Sangeeta W/O Naresh Kumar
29	12 dated 07/04/2014 (Intkal No.3233)	12.5 marla	Rajeev S/O Ramkishan
30	955 dated 20/10/2014 (Intkal No.3337)	2 kanal 6 marla	Surinder Bakshi S/O Yogdhan Bakshi

Even Mr. Surinder Bakshi has also sold the executing sale deeds as under:-

Sr. No.	Sale Deed No. and Date	Area of the land	Name of owner/purchaser
31	1042 dated 10-11-2014 (Intakal No 3355)	10 marla	Kamlesh Santosh W/O
32	1186 dated 04/12/2014 (Intkal No.3361)	10 marla	Kamlesh Santosh W/O
33	73 dated 23/4/2015 (Intkal No.3457)	05 marla	Pushpa w/o Gian Chand

In this case, evidence is to be adduced by both the parties and the questions of fact with regard to competence of the petitioners to sell the land shall be considered after adduce of the evidence.

The Hon'ble Supreme Court in *State of Haryana and others versus Ch. Bhajan Lal and others*, 1992 AIR (Supreme Court) 604, has made the following observations:-

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Whether the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Whether, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.
5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

While testing the facts of the case on the touchstone of the parameters laid down by the Hon'ble Supreme Court in Ch. Bhajan Lal case (supra), the impugned order does not warrant interference.

Dismissed.

Nothing expressed above shall have bearing on the merits of the case.

(RAJ SHEKHAR ATTRI)
JUDGE

05 Oct, 2018
m. sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No